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UNITED STATES BANKRUPTCY COURT

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NORTHERN DISTRICT OF CALIFORNIA - SANTA ROSA DIVISION

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In re

Case No. 10-10568

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GAUDENCIO HERNANDEZ AND MARIA
D HERNANDEZ,

Chapter 13

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Debtors.

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STIPULATION RE: AVOIDANCE OF
LIEN

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This Stipulation Re: Avoidance of Lien is entered into by and between, Gaudencio
16 Hernandez and Maria D Hernandez (hereinafter referred to as "Debtors"), by and through their
17 attorney of record, Evan Livingstone; and US Bank NA as Indenture Trustee of Series 2006-HE1,
18 (hereinafter referred to as "Creditor"), by and through its attorney of record Pite Duncan, LLP.

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RECITALS

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A. Debtors are the makers of a Note in favor of GreenPoint Mortgage Funding, Inc.
21 dated May 26, 2006, in the original principal amount of \$54,000.00 ("Note"), which is secured by

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a Second Deed of Trust encumbering the real property at 18091 Comstock Ave, Sonoma, CA 95476
23 (the "Subject Property"). The Subject Property is more fully described in the legal description
24 attached hereto as **Exhibit A**, which is incorporated herein by this reference. The Note and Second
25 Deed of Trust are collectively referred to hereinafter as the "Subject Loan."

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B. Subsequently, all right, title and interest in the Subject Loan were sold, assigned and
27 transferred to Creditor.

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1 C. Currently, GMAC Mortgage, LLC is the authorized loan servicing agent for the
2 Subject Loan.

3 D. On or about February 22, 2010, Debtors filed a voluntary petition under Chapter 13
4 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California
5 - Santa Rosa Division, which was assigned Case No. 10-10568.

6 E. On or about February 22, 2010, Debtors filed a Chapter 13 Plan wherein the Debtors
7 indicate they will move the court to avoid Creditor's lien on the Subject Property.

8 **THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:**

9 1. Creditor's claim shall be allowed as a non-priority general unsecured claim;

10 2. The avoidance of Creditor's Second Deed of Trust is contingent upon Debtors'
11 completion of their Chapter 13 plan and Debtors' receipt of a Chapter 13 discharge;

12 3. Upon Debtors' receipt of a Chapter 13 discharge and completion of their Chapter 13
13 Plan, Debtors may record this stipulation, and the corresponding order thereon, with the Sonoma
14 County Recorder's Office;

15 4. Creditor shall retain its lien for the full amount due under the Subject Loan in the
16 event of either the dismissal of Debtors' Chapter 13 case or the conversion of Debtors' Chapter 13
17 case to any other Chapter under the United States Bankruptcy Code;

18 5. In the event that the holder of the first lien on the Subject Property forecloses on its
19 security interest and extinguishes Creditor's Second Deed of Trust prior to Debtors' completion of
20 their Chapter 13 Plan and receipt of a Chapter 13 discharge, Creditor's lien shall attach to the surplus
21 proceeds of the foreclosure sale for the full amount of the Subject Loan balance at the time of the

22 sale; and

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1 6. Each party shall bear their own attorneys' fees and costs incurred to the negotiation
2 and preparation of the instant stipulation.

3 **IT IS SO STIPULATED:**

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6 Dated: May 25, 2010

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11 Dated: June 2, 2010

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Evan Livingstone

By: _____
EVAN LIVINGSTONE
Attorney for Gaudencio Hernandez and Maria
D Hernandez

PITE DUNCAN, LLP

By: /s/ Melodie A. Whitson
MELODIE A. WHITSON
Attorneys for Creditor

LEGAL DESCRIPTION

EXHIBIT "A"

The land referred to herein is situated in the State of California, County of Sonoma, Unincorporated Area, and is described as follows:

Lot 14, in Block 2, as shown upon the Map entitled "Map of Eaton Park Subdivision Sonoma Vista Tract, Part of the Petaluma Rancho, Sonoma County, California", surveyed September 1912 by G.W. Anderson, Engineer and filed in the office of the Recorder of Sonoma County, California, on October 7, 1912 in Book 28 of Maps, page 15.

APN: 052-193-015